

are those which occurred in 1905, 1906 and 1907. Consequently his application for a decree absolute made in August, 1909, must be held to have been made within time. We dismiss this appeal with costs.

Appeal dismissed.

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BADRI
NARAIN
v.
KUMJ BIHARI
LAL.

1913

February, 7.

Before Mr. Justice Sir Harry Griffin and Mr. Justice Chamier

SHIDA ALI (PLAINTIFF) v. PHULLO AND ANOTHER (DEFENDANTS)*

Act No. IX of 1908 (Indian Limitation Act), schedule I, article 132—*Limitation—Malikana—Suit for malikana—Decree asked for against property charged.*

Where a plaintiff sued for the recovery of *malikana* for 11 years and claimed a decree against the property on which the *malikana* was charged, it was held that the suit was within time having regard to article 132 of the first schedule to the Indian Limitation Act, 1908. *Kallar Roy v. Ganga Pershad Singh* (1) distinguished.

THE facts of this case were as follows :—

The plaintiff sued on the allegations that in mauza Razzakpur the owners of *muafi* rights were bound to pay to the owners of zamindari rights Rs. 12-8-0 per cent. of cash rental, 2½ seer per maund of the grain rental, and Rs. 17-8-0 a year as *bhent* (present); that these dues were a charge on the *muafi* rights; that in mahal *safed* of that mauza there was a *patti* of 5 biswas; that the defendant was a *muafidar* of the whole of that and a zamindar of 3 biswa 2 biswansis 10 kachwansis of it; that the plaintiff was a zamindar of one biswa 17 biswansis 10 kachwansis and entitled to recover the aforesaid dues in respect of that; that the defendant had not paid him any thing for the years 1305 *fasli* to 1316 *fasli*; hence this suit for Rs. 625-6-4 as principal, and Rs. 498-9-0 as interest, to be realized from the defendant's 85 biswas. The defendants pleaded that the suit was not cognizable by the Civil Court; that the amount of *bhent* was not Rs. 17-8-0 per annum; that the dues payable were not a charge on the land; that the dues in question were payable by the holder of the whole 20 biswa zamindari rights jointly to the holders of the whole 20 biswa *muafi* rights, therefore the suit against the defendants alone was not maintainable and was bad for non-joinder of parties; that the plaintiff himself owned *muafi* right over five biswas till the

*First Appeal No. 248 of 1911 from a decree of Pitambar Joshi, Second Additional Judge of Moradabad, dated the 18th of March, 1911.

(1) (1905) L. L. R., 33 Calo., 998.

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21st of December, 1908, on which date $4\frac{1}{2}$ biswas were auctioned off and half a biswa was still held by him; that a large part of the claim is barred by limitation; that the amounts of rental and quantities of zamindari rights as mentioned by the plaintiff were wrong, and that the claim about interest was wrong. The court below dismissed the suit. The plaintiff appealed.

Mr. S. A. Haider, for the appellant, relied on *Hurmuzi Begum v. Hirdaynarain* (1), *Churaman v. Balli* (2), *Lallubhai v. Naran* (3) and *Jagarnath Pershad Singh v. Kharach Lal* (4) and submitted that the *malikana* being a charge on property the whole amount was recoverable. Article 132 of the Limitation Act was applicable.

The Hon'ble Dr. Tej Bahadur Supru, for the respondents, contended that the claim, except that for three years, was barred by limitation. He relied on *Kallar Roy v. Ganga Pershad Singh* (5).

Mr. S. A. Haider was not heard in reply.

GRIFFIN and CHAMIER, JJ.:—This is a plaintiff's appeal arising out of a suit to recover eleven years' arrears of *malikana*. The plaintiff asked for a decree against the property, on which, he says, the *malikana* allowance was chargeable. The court below has given him a decree for Rs. 57-3-4 only. In appeal to this Court it is pointed out, on behalf of the appellant, that the court below, in making its calculation, has made an obvious mistake and that the sum due to the plaintiff appellant on the basis adopted by the court below should be Rs. 262-12-5, to which should be added Rs. 18-0-0 on account of *bhent*. The defendants respondents have filed objections, and it is contended on their behalf that the suit is barred by time. Reliance is placed on *Kallar Roy v. Ganga Pershad Singh* (5). In that case the learned Judges refused to apply the provisions of article 132 of the Limitation Act, the reason being that in the particular case before them the plaintiff had not asked for a decree against the property chargeable with *malikana*. In the present case the plaintiff asked for a decree against the property, although the court below has not granted it. The explanation to article 132 leaves no doubt as to the period

(1) (1880) I. L. R., 5 Calc., 921. (3) (1882) I. L. R., 6 Bom., 719.

(2) (1887) I. L. R., 9 All., 591. (4) (1905) 10 C. W. N., 151.

(5) (1905) I. L. R., 33 Calc., 998.

of limitation applicable to suits of this nature. We allow the appeal so far that in lieu of the decree for Rs. 57-3-4 passed by the court below we substitute a decree for Rs. 280-12-5. Parties will pay and receive costs in proportion to failure and success in both courts. The cross objections are dismissed with costs.

Appeal allowed.

1913

SHAYDA ALI
v.
PHULLO.

1913

February, 7.

Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Banerji.

ANANT DAS (DEFENDANT) v UDAI BHAN PARGAS (PLAINTIFF).*

Civil Procedure Code (1908), section 11.—Res judicata—Two suits, one judgement and two decrees—Two appeals of which one abates before the other is heard.

A plaintiff instituted, on the same day and in the same court, two suits, in each of which the claim was for a declaration that he was the *mahant* of a certain *makh*. The one was against defendant *A* only, the other against defendants *A* and *S*. Both suits were decided by a single judgement, but a separate decree was framed in each. In the former suit *A* appealed. In the latter *S* appealed, but *A* did not. Pending *A*'s appeal *S* died and his appeal abated and the judgement in the case became final. *Held* that the hearing of *A*'s appeal was barred. *Zaharia v. Debia* (1) followed.

IN this case two suits were instituted in the court of the Subordinate Judge of Gorakhpur apparently on the same day. The plaintiff in both suits was *mahant* Udai Bhan Pargas *alias* Angan Das. In one suit the defendant was Anant Das; and in the other Anant Das and Sundar Das. In both suits the plaintiff claimed a declaration that he was *mahant* of a certain *makh*. In the latter suit the claim was as follows:—"The plaintiff's title and the defendants' want of title may be established, and it may be declared that the plaintiff is entitled to receive the papers and the box aforesaid. The box and the papers detailed below may be awarded to the plaintiff." In the earlier part of the plaint the plaintiff stated "but as both the defendants deny the plaintiff's title, he brings this claim against both the defendants in respect of a box which contains papers, documents, etc., . . . and which Sundar Das the defendant has taken back after the institution of this suit without the plaintiff's knowledge." Both the suits were tried together, and amongst the issues framed were the following:—"Is the plaintiff *chela* of Karan Das, and was he appointed *mahant*? Has the plaintiff a right to sue? What is the custom relating to the *mahantship*, and was the plaintiff

* First Appeal No. 131 of 1911, from a decree of Harbandhan Lal, Additional Subordinate Judge of Gorakhpur, dated the 26th of January, 1911.

(1) (1910) I. L. R., 33 All., 51.